

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: NINE WEST LBO SECURITIES LITIGATION

)
) No. 20-MD-2941 (JSR)
)

Pertains to *Kirschner, et al. v. McClain, et al.*, No. 20-cv-4262

**STIPULATION AND NOTICE OF DISMISSAL
WITHOUT PREJUDICE OF JACK GROSS**

Marc S. Kirschner, as Litigation Trustee for the NWHI Litigation Trust, and Wilmington Savings Fund Society, FSB, as successor indenture trustee for the 6.875% Senior Notes due 2019, the 8.25% Senior Notes due 2019, and the 6.125% Senior Notes due 2034 of Nine West Holdings, Inc. (collectively, “Plaintiffs”), and defendant **Jack Gross** (“Defendant,” and together with Plaintiffs, the “Parties”), through the Parties’ respective undersigned counsel, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby enter into this Stipulation and Notice of Dismissal Without Prejudice.

WHEREAS, Defendant is named as a defendant in the above-captioned action (the “Action”);

WHEREAS, Defendant has not filed an answer or a motion for summary judgment in the Action;

WHEREAS, on August 27, 2020, the Court entered an Opinion and Order (Dkt. No. 116) dismissing Counts V and VI of the First Amended Complaint in the Action (Dkt. No. 110) against Defendant;

WHEREAS, Defendant represents that it is entitled to dismissal of the remaining count of the First Amended Complaint against Defendant, Count VII, based on the defense, as set

forth in the email message from Defendant's counsel Jared Louzon to Plaintiffs' counsel Stan Chiueh, dated October 15, 2020, and the attachments thereto (the "Email"), that Defendant did not receive any Change in Control Payment from Nine West Holdings, Inc., and Plaintiffs have agreed to dismiss Count VII of the First Amended Complaint without prejudice against Defendant based on Defendant's representations, and subject to, and in accordance with, the terms and conditions set forth herein;

IT IS HEREBY STIPULATED AND AGREED, by and between the Parties, as follows:

1. Defendant hereby incorporates herein the representations in the Email, represents that since April 8, 2014 Defendant has remained employed by Nine West Holdings, Inc. or an affiliated entity and did not receive any Change in Control Payment or severance payment from Nine West Holdings, Inc. or any affiliated entity, and agrees that the foregoing representations are material to Plaintiffs' agreement to dismiss Count VII of the First Amended Complaint without prejudice against Defendant.

2. In consideration for Plaintiffs' agreement voluntarily to dismiss Count VII of the First Amended Complaint without prejudice against Defendant, Defendant acknowledges and agrees that Plaintiffs shall have the right to reassert Count VII in the future against Defendant, in any capacity at any time up until 90 days after the close of fact discovery in the Action, if Plaintiffs make the determination in good faith that the information provided in the Email was incorrect or incomplete by 5% or \$100,000, whichever is less. If Plaintiffs do so: (i) Defendant shall not seek any relief, and shall waive and relinquish any right to any relief, pursuant to Rules 41(a)(1)(B) and 41(d) of the Federal Rules of Civil Procedure; (ii) Defendant shall not assert any defense to the reassertion of the dismissed Count VII which (a) relates to the

expiration of any applicable statute of limitations, statute of repose, or other rule or principle based upon the passage of time, whether that defense is statutory, contractual, equitable, or otherwise, including without limitation, waiver, estoppel, and laches, and (b) arose between and including the date of filing of the Action and the date 90 days after the close of fact discovery in the Action; and (iii) Defendant authorizes its undersigned counsel to accept service, on such Defendant's behalf, of any such complaint (and related summons) in which Plaintiffs reassert such Count VII against Defendant. Nothing herein is intended to revive a claim that was time-barred as of the date of filing of the Action.

3. Plaintiffs and Defendant reserve all other rights and defenses not explicitly addressed in this Stipulation.

4. Pursuant to Federal Rule of Civil Procedure 41(a)(1), Plaintiffs hereby dismiss Count VII of the First Amended Complaint without prejudice solely against Defendant.

Dated: New York, New York
October 15, 2020

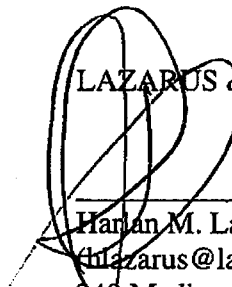
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Attorneys for Defendant Jack Gross

SO ORDERED.

Dated: New York, New York
October ___, 2020

JED S. RAKOFF, U.S.D.J.